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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/041,565	01/10/2002	Paul Luchinger	032498-010	2742
7590	12/18/2003		EXAMINER	
Patrick C. Keane BURNS, DOANE, SWECKER & MATHIS, L.L.P. P.O. Box 1404 Alexandria, VA 22313-1404			NOLAND, THOMAS	
		ART UNIT	PAPER NUMBER	
		2856		

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/041,565	Applicant(s) LUCHINGER, PAUL
Examiner Thomas P. Noland	Art Unit 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 03 October 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-48 is/are pending in the application.

4a) Of the above claim(s) 27-48 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-3,7,11,12,18,19 and 23-26 is/are rejected.

7) Claim(s) 4-6,8-10,13-17 and 20-22 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 10 January 2002 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \*    c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

1)  Notice of References Cited (PTO-892)                    4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5)  Notice of Informal Patent Application (PTO-152)

3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .                    6)  Other: \_\_\_\_\_ .

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1. Applicant's election with traverse of the invention of group 1, claims 1-26 in Paper No. 7, filed Oct. 3, 2003 is acknowledged. The traversal is on the ground(s) that there would be no burden in searching and examining the 22 additional claims, despite being classified in different places and directed to different subject matter, since it was believed that the same classes would be searched and the same references applied. This is not found persuasive because of the reasons advanced in the original requirement which showed why the examiner has a reasonable expectation there would be a burden in examining the second group.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 27-48 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in Paper No. 7.

3. Applicant is requested to cancel claims 27-48 in any response hereto.

4. The drawings are objected to because in Fig. 3 the figures should be separately labeled as Fig. 3A- Fig. 3D. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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5. Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect may be deferred until after the examiner has considered the proposed drawing correction. Failure to timely submit the proposed drawing correction will result in the abandonment of the application.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, line 2 for clarity "of one" should be ---selected from the group consisting of---.

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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9. Claims 1-3, 5-7, 11 and 19 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Lochner et al (DE 29917940 U1, cited in IDS or US 6,615,638).

Note the content of DE 29917940 U1 was taken to be equivalent to that of US 6,615,638.

In US 6,615,638 note abstract and Figs. 1-4. Note col. 3, line 3- col. 4, line 27 discloses the use of a drive unit to transport the containers. Use of plural load receivers is not excluded by the claim language.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 12 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lochner et al.

Lochner et al does not appear to disclose or specify the use of such well known means as the use of a cover, traveling along a linear or circular path or the use of receptacle codes and a sensor device to monitor such codes. However such are well known expedients in the tube transport art and would have been obvious to have used in a system similar to that of Lochner et al in order to take advantage of their known usefulness in such systems.

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12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited reference show pipette calibration or adjustment and/or calibration of dispensers by weight.

13. Claims 4-6, 8-10, 13-18 and 20-22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tom Noland whose telephone number is (703) 305-4765. Beginning January 26, 2004 telephone number (571) 272-2202 should be used. The examiner can normally be reached on weekdays from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Hezron E. Williams, can be reached on (703) 305-4705. Beginning Jan. 26, 2004 his telephone number will be (571) 272-2208.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

12/17/03  
Thomas P. Noland  
Primary Examiner  
Art Unit 2856

*Thomas Noland*

Noland/ek  
12/16/03